

United States District Court
Eastern District of North Carolina
Western Division

Case No. 5:20-CT-3375

(To be filled out by Clerk's Office only)

FILED

DEC 18 2020

PETER A. MOORE, JR., CLERK
US DISTRICT COURT, EDNC
BY  DEP CLK

Marvin C. Powers

Inmate Number 0531387

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

COMPLAINT

(Pro Se Prisoner)

Dr. Gary J. Tucker, Dr. K. Nelson, Dr. Tammy
North Carolina Dept of Public Safety - Prison
Medical Utilization Review Board, Dr. James
Clare

Jury Demand?

☐ Yes

☒ No

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Section IV. Do not include addresses here.)

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

I. COMPLAINT

Indicate below the federal legal basis for your claim, if known. This form is designed primarily for pro se prisoners challenging the constitutionality of their conditions of confinement, claims which are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "Bivens" action (against federal defendants).

- ☒ 42 U.S.C. § 1983 (state, county, or municipal defendants)
- ☐ Action under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971) (federal defendants)
- ☐ Action under Federal Tort Claims Act (United States is the proper defendant; must have presented claim in writing to the appropriate Federal agency and received a notice of final denial of the claim pursuant to 28 U.S.C. § 2401(b))

II. PLAINTIFF INFORMATION

Marvin C. Powers
Name

0531387
Prisoner ID #

Neuse Correctional Institution
Place of Detention

P.O. Box 2087
Institutional Address

Goldsboro NC 27533
City State Zip Code

III. PRISONER STATUS

Indicate whether you are a prisoner or other confined person as follows:

- ☐ Pretrial detainee ☐ State ☐ Federal
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner

IV. DEFENDANT(S) INFORMATION

Please list the following information for each defendant. If the correct information is not provided, it could result in the delay or prevention of service. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant 1: Dr. Inman
Name
Medical doctor
Current Job Title
Craven Correctional Institution
Current Work Address
Vanceboro NC
City State Zip Code
Capacity in which being sued: ☐ Individual ☐ Official ☒ Both

Defendant 2: Dr. Nelson
Name
medical doctor
Current Job Title
Newse Correctional Institution
Current Work Address
Goldsboro NC 27533
City State Zip Code
Capacity in which being sued: ☐ Individual ☐ Official ☒ Both

Defendant(s) Continued

Defendant 3: Medical Utilization Review Board; NC DPS
Name

Same as above
Current Job Title

4260 Mail Service Center
Current Work Address

Raleigh NC 27699
City State Zip Code

Capacity in which being sued: ☐ Individual ☐ Official ☒ Both

Defendant 4: Dr. James Clare
Name

Dental Director; NC DPS
Current Job Title

4278 Mail Service Center
Current Work Address

Raleigh NC 27699-4278
City State Zip Code

Capacity in which being sued: ☐ Individual ☐ Official ☒ Both

V. STATEMENT OF CLAIM

Place(s) of occurrence: Craven Correctional, Johnston Correctional, Greene Correctional, Wilkesboro Correctional and Hoke Correctional, Nause Correctional.

Date(s) of occurrence: 2017 — ongoing

State which of your federal constitutional or federal statutory rights have been violated:

Eighth Amendment, cruel & unusual punishment.

State here briefly the FACTS that support your case. Describe how each defendant was personally involved in the alleged wrongful actions, state whether you were physically injured as a result of those actions, and if so, state your injury and what medical attention was provided to you.

FACTS:

Who
did what to
you?

In 2017 I was diagnosed with osteoarthritis in both hips by the provider, Dr. Tuman, who made the decision based upon his viewing of my X-rays on both hips, this, after my complaint(s) of constant continual pain and the inability to walk without a limp, sleep more than 2 or 3 hrs. at a time or sit for more than 1 hr. at the time. In Dr. Tuman's opinion my left hip was almost "bone on bone" and my right hip was almost as bad. At that time he told me I need a hip replacement but "you are too young for a hip replacement." I was sent to physical rehabilitation

instead of going to see an orthopedic surgeon. NC. Dept of Public Safety - prison medical review Board failed to respond to me. I signed on for a dental plan to get all my teeth pulled. This took (3) three years and multiple dentists. The end result is supposed to be dentures. I have no access to medical records to report all the dentists involved with my dental care. Dr. Nelson at Nause Correctional failed to treat my sciatic nerve problem.

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What
happened
to you?

As a result in the delay of treatment for osteoarthritis, I am in constant pain, as a result my hypertension has been worsened. I have gone from walking to walking with a limp and finally confined to a wheelchair.

Without dentures I cannot chew food without painful, bleeding gums.

Sciatic nerve pain comes & goes.

When did it
happen to
you?

It started in 2017 and has been ongoing since then. I have had no relief from any of the ailments (medical issues) I have described. It is still ongoing.

Where did it
happen to
you?

I started Dental Program in 2017 - 1st extraction of all teeth. 2nd fitted for dentures 3rd dentures To date of Complaint, only extractions have occurred leaving me completely toothless. When I eat I have bleeding and pain, also facial disfigurement

It started at Craven Correctional and has been ongoing where ever I have been shipped, since my incarceration on 4/21/2017 Johnston Correctional, Greene Correctional, Wilkesboro Correctional, Hoke Correctional, Newse Correctional Institution

What was
your
injury?

I had and have osteoarthritis in both hips resulting in constant pain with very little relief. I have continually gotten worse since 2017, when diagnosed. Also due to the constant pain my chronic hypertension has been exacerbated. My blood pressure readings are constantly higher. Constant high blood pressure might or will result in damage to the heart and other internal organs.

I also have had sciatic nerve problems that have been addressed once. However, when complained by sick call I saw a nurse that told me she would "tell the doctor to see if I could get further treatment. That never happened resulting in ongoing pain.

As for being toothless, I have experienced difficulty in chewing, painful gums after eating, and gum bleeding.

I also have osteoarthritis in both hips & knees as stated, with severe constant pain, since 2017. I walked into prison, now, in 2020 I am confined to a wheelchair and cannot walk more than 6 feet at one time, severe pain continues as a chronic pain.

VI. ADMINISTRATIVE PROCEDURES

WARNING: Prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions. 42 U.S.C. § 1997e(a). Your case may be dismissed if you have not exhausted your administrative remedies.

Have you filed a grievance concerning the facts relating to this complaint? ☒ Yes ☐ No

If no, explain why not:

Is the grievance process completed? ☒ Yes ☐ No

If no, explain why not:

VII. RELIEF

State briefly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

I want hip replacement surgery on both hips, I want compensatory, nominal and punitive damages. ~~I~~ I want dentures. I want Dept of Public Safety to pay for all medical relief + other monetary damages. ~~I~~ ~~not for~~ knee replacement surgery on both knees and hips.

VIII. PRISONER'S LITIGATION HISTORY

The “three strikes rule” bars a prisoner from bringing a civil action or an appeal in forma pauperis in federal court if that prisoner has “on three or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. §1915(g).

Have you brought any other lawsuits in state or federal court while a prisoner?

☐ Yes ☒ No

If yes, how many? _____

Number each different lawsuit below and include the following:

- Name of case (including defendants' names), court, and docket number
- Nature of claim made
- How did it end? (For example, if it was dismissed, appealed, or is still pending, explain below.)

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

IX. PLAINTIFF'S DECLARATION AND WARNING

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint and provide prison identification number and prison address.

12/15/2020
Dated

Marvin C. Powers
Plaintiff's Signature

Marvin C. Powers
Printed Name

0531387
Prison Identification #

P.O. Box 2087 Goldsboro NC 27533
Prison Address City State Zip Code

Neuse Correctional Institution